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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

TOMAS PEREZ,

Defendant and Appellant.

E055642

(Super.Ct.No. FWV1000925)

OPINION

APPEAL from the Superior Court of San Bernardino County. Stephan G. Saleson, Judge. Affirmed with directions.

Neil Auwarter, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, A. Natasha Cortina and Heather M. Clark, Deputy Attorneys General, for Plaintiff and Respondent.

INTRODUCTION

Because this case involves a single and simple issue of law, no statement of the facts of the case is necessary.

Defendant and appellant Tomas Perez entered a plea of no contest to charges of receiving stolen property (Pen. Code, § 496, subd. (a)) and transportation of methamphetamine (Health & Saf. Code, § 11379). Defendant also admitted a prior “strike” (Pen. Code, § 667, subds. (b)-(i)) and a prior prison term allegation (Pen. Code, § 667.5). Defendant received an agreed sentence of 10 years four months in state prison.

DISCUSSION

Defendant’s sole contention on appeal relates to an evident clerical error in the abstract of judgment. As noted above, defendant admitted a prior “strike” and that he served one prior felony prison term. The trial court then sentenced him to the aggravated term of four years for the transportation offense, doubled due to the “strike” (Pen. Code, § 667, subd. (e)(1)), added one-third the midterm consecutively for the receiving offense (eight months, doubled [Pen. Code, §§ 496, 667, subd. (e)(1), 1170, subd. (h)(1)]), and finally added one year for the prior prison term. However, the abstract of judgment reflects that an enhancement was imposed pursuant not to Penal Code section 667.5, but 667, subdivision (a)(1). That statute, of course, prescribes the imposition of a *five*-year enhancement when a defendant has a prior conviction for a serious felony.

The abstract of judgment does correctly reflect that only a one-year enhancement was imposed, consistent with Penal Code section 667.5.¹

The People agree both that the abstract of judgment is in error and that the error may be corrected on appeal. (*People v. Mitchell, supra*, 26 Cal.4th at p. 185.) Without further ado, we will therefore so order.

DISPOSITION

The judgment is affirmed. The trial court is directed to issue a corrected abstract of judgment reflecting that the enhancement of one year was imposed pursuant to Penal Code section 667.5.

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HOLLENHORST

Acting P.J.

We concur:

KING

J.

CODRINGTON

J.

¹ We assume that defendant is concerned that the Department of Corrections and Rehabilitation would otherwise believe that the “one year” was incorrect and calculate his term by adding an additional four years. Given the People’s concession, it seems unfortunate that some less complicated way of fixing the problem could not have been found as there was no other issue to be brought before this court. We note that the pendency of the appeal did not affect the trial court’s power to correct clerical errors in its records. (See *People v. Mitchell* (2001) 26 Cal.4th 181, 185; *In re Candelario* (1970) 3 Cal.3d 702, 705.)